

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN RE: TAASERA LICENSING LLC,
PATENT LITIGATION

§
§ Case No. 2:22-md-03042-JRG
§

§ **JURY TRIAL DEMANDED**
§

THIS DOCUMENT RELATES TO
CASE NO. 2:22-cv-00427-JRG

§

TAASERA LICENSING LLC,

§ Case No. 2:22-cv-00427-JRG
§

Plaintiff,

§ **JURY TRIAL DEMANDED**
§

v.

§

MUSARUBRA US LLC, D/B/A TRELLIX,

§

Defendant.

§

§

§

§

§

**PLAINTIFF TAASERA LICENSING LLC'S ANSWER
TO MUSARUBRA US LLC'S COUNTERCLAIMS**

Plaintiff/Counterclaim-Defendant Taasera Licensing LLC ("Taasera"), by and through its undersigned counsel, hereby responds to the counterclaims in Musarubra US LLC, d/b/a Trellix's ("Trellix") Answer, Affirmative Defenses, and Counterclaims in Response to Plaintiff's Complaint for Patent Infringement (Dkt. No. 20) (the "Counterclaims"), as follows:

NATURE AND BASIS OF ACTION

1. Taasera admits that this is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Taasera admits the patents at issue are U.S. Patent Nos. 7,673,137 (the "'137 Patent"), 8,327,441 (the "'441 Patent"), 8,850,517 (the "'517 Patent"), 8,955,038 (the "'038 Patent"), 8,990,948 (the "'948 Patent"), 9,071,518 (the "'518 Patent"), 9,092,616 (the "'616 Patent"), 9,608,997 (the "'997 Patent"), and 9,923,918 (the "'918 Patent").

Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

PARTIES

2. Taasera admits that Trellix states it is a limited liability company organized and existing under the laws of the State of Delaware with a place of business in Plano, Texas.

3. Taasera admits that it is a limited liability company organized and existing under the laws of Texas with its principal place of business in Plano, Texas.

JURISDICTION AND VENUE

4. Taasera admits this Court has jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

5. Admitted.

6. Admitted.

FIRST COUNTERCLAIM: DECLARATION OF NON-INFRINGEMENT OF THE '137 PATENT

7. Taasera repeats and realleges its responses in paragraphs 1-6 above as if fully set forth herein.

8. Admitted.

9. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '137 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

10. Denied.

11. Denied.

12. Denied.

**SECOND COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '137 PATENT**

13. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

14. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

15. Denied.

16. Denied.

17. Denied.

**THIRD COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '441 PATENT**

18. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

19. Admitted.

20. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '441 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

21. Denied.

22. Denied.

23. Denied.

**FOURTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '441 PATENT**

24. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

25. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

26. Denied.

27. Denied.

28. Denied.

**FIFTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '517 PATENT**

29. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

30. Admitted.

31. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '517 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

32. Denied.

33. Denied.

34. Denied.

**SIXTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '517 PATENT**

35. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth fully herein.

36. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

37. Denied.

38. Denied.

39. Denied.

**SEVENTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '038 PATENT**

40. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if though fully set forth herein.

41. Admitted.

42. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '038 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

43. Denied.

44. Denied.

45. Denied.

**EIGHTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '038 PATENT**

46. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

47. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

48. Denied.

49. Denied.

50. Denied.

**NINTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '948 PATENT**

51. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

52. Admitted.

53. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '948 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

54. Denied.

55. Denied.

56. Denied.

**TENTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '948 PATENT**

57. Taasera incorporates and realleges its responses in Paragraphs 1-6 as if fully set forth herein.

58. Taasera admits that there exists an actual and justiciable controversy between Taasera and Trellix regarding the validity of the '948 Patent, but otherwise denies the allegations in Paragraph 58 of the Counterclaims.

59. Denied.

60. Denied.

61. Denied.

**ELEVENTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '518 PATENT**

62. Taasera repeats and realleges its responses in Paragraphs 1-6 above as if fully set forth herein.

63. Admitted.

64. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

65. Denied.

66. Denied.

67. Denied.

**TWELFTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '518 PATENT**

68. Taasera repeats and realleges its responses to Paragraphs 1-6 as if fully set forth herein.

69. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

70. Denied.

71. Denied.

72. Denied.

**THIRTEENTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '616 PATENT**

73. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

74. Admitted.

75. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '616 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

76. Denied.

77. Denied.

78. Denied.

**FOURTEENTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '616 PATENT**

79. Taasera repeats and realleges its responses in Paragraphs 1-6 above as if fully set forth herein.

80. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

81. Denied.

82. Denied.

83. Denied.

**FIFTEENTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '997 PATENT**

84. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

85. Admitted.

86. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '997 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

87. Denied.

88. Denied.

89. Denied.

**SIXTEENTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '997 PATENT**

90. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

91. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

92. Denied.

93. Denied.

94. Denied.

**SEVENTEENTH COUNTERCLAIM: DECLARATION OF
NON-INFRINGEMENT OF THE '918 PATENT**

95. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

96. Admitted.

97. Taasera admits that there exists an actual and justiciable controversy between Trellix and Taasera regarding the alleged infringement of the '918 Patent. Taasera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

98. Denied.

99. Denied.

100. Denied.

**EIGHTEENTH COUNTERCLAIM: DECLARATION OF
INVALIDITY OF THE '918 PATENT**

101. Taasera repeats and realleges its responses in Paragraphs 1-6 above, as if fully set forth herein.

102. Taasera is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

103. Denied.

104. Denied.

105. Denied.

PRAYER FOR RELIEF

Taasera denies that Trellix is entitled to any of the relief requested in its Prayer for Relief or to any relief whatsoever.

GENERAL DENIAL

Taasera further denies any allegation in the Counterclaims that is not specifically admitted, denied, or otherwise responded to in this Answer.

TAASERA'S AFFIRMATIVE DEFENSES

Subject to the responses above, Taasera contends and asserts the following defenses in response to the allegations in Trellix's Counterclaims. By asserting these affirmative defenses, Taasera does not admit that it bears the burden of proof on any issue and does not accept any burden it would not otherwise bear. In addition to the affirmative and other defenses described below, and subject to the responses above, Taasera intends to conduct discovery and specifically reserves all rights to assert additional affirmative and other defenses consistent with the facts that become known through the course of discovery or otherwise. For its affirmative defenses, Taasera alleges as follows:

FIRST AFFIRMATIVE DEFENSE
(FAILURE TO STATE A CLAIM)

Trellix has failed to state a claim against Taasera upon which relief can be granted. For example, the Counterclaims lack a factual basis, and fail to make more than bare conclusory allegations regarding non-infringement and invalidity of the Patents-in-Suit.

SECOND AFFIRMATIVE DEFENSE
(WAIVER, ESTOPPEL, AND UNCLEAN HANDS)

Trellix's Counterclaims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE
(NO EXCEPTIONAL CASE)

Trellix cannot prove that this is an exceptional case justifying an award of attorneys' fees against Taasera pursuant to 35 U.S.C. § 285.

FOURTH AFFIRMATIVE DEFENSE
(INFRINGEMENT)

As set forth in Plaintiff's Complaint, Trellix has infringed one or more valid and enforceable claims of the Patents-in-Suit.

OTHER AFFIRMATIVE DEFENSES

Taasera reserves the rights to assert any and all additional affirmative defenses under Fed. R. Civ. P. 8(c), the Patent Laws of the United States, and any other legal or equitable defenses which may now exist or in the future be available based on discovery and further factual investigation in this case.

WHEREFORE, Plaintiff Taasera respectfully requests that Trellix take nothing by way of its Counterclaims, that judgment be entered in favor of Taasera, that Taasera be awarded its attorneys' fees and costs, and all other just and proper relief.

Dated: January 30, 2023

Respectfully submitted,

/s/ Alfred R. Fabricant

Alfred R. Fabricant

NY Bar No. 2219392

Email: ffabricant@fabricantllp.com

Peter Lambrianakos

NY Bar No. 2894392

Email: plambrianakos@fabricantllp.com

Vincent J. Rubino, III

NY Bar No. 4557435

Email: vrubino@fabricantllp.com

Joseph M. Mercadante

NY Bar No. 4784930

Email: jmercadante@fabricantllp.com

FABRICANT LLP

411 Theodore Fremd Avenue,

Suite 206 South

Rye, New York 10580

Telephone: (212) 257-5797

Facsimile: (212) 257-5796

Justin Kurt Truelove

Texas Bar No. 24013653

Email: kurt@truelovelawfirm.com

TRUELOVE LAW FIRM, PLLC

100 West Houston Street

Marshall, Texas 75670

Telephone: (903) 938-8321

Facsimile: (903) 215-851

Jennifer L. Truelove

Texas State Bar No. 24012906

Email: jtruelove@mckoolsmith.com

MCKOOL SMITH, P.C.

104 E. Houston Street, Suite 300

Marshall, Texas 75670

Telephone: (903) 923-9000

Facsimile: (903) 923-9099

ATTORNEYS FOR PLAINTIFF

TAASERA LICENSING LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 30, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Alfred R. Fabricant

Alfred R. Fabricant